

**REMARKS**

**Proposed Drawing Amendments**

Figures 7, 8 and 9 will be corrected to provide the appropriate crosshatching where elements are cut or sectioned.

Applicants point out that the Brief Description of the Drawings has been amended for Figures 8 and 9 to clarify that they are views about the cut line C-C. Applicants also point out that Figure 8 shows a partial cross-sectional view of the container bottom along line C-C while Figure 9 is a front elevation view of the container bottom along line C-C. Figure 8 and Figure 9 therefore represent two different perspective views about the same line C-C; this is the reason that Figures 8 and 9 are rendered differently within the drawings.

**Applicants Use of Trademarks**

Applicants respectfully contend that they have properly used the trademark "Pringles®" within their patent application.

MPEP 608.01(v) states that Trademarks should be identified by capitalizing each letter of the mark or otherwise indicating the description of the mark; e.g., by TM or ® following the word.

In each instance of its use, the word Pringles is followed by the ® symbol to denote its use as a trademark.

As such, Applicants respectfully request that the Examiner remove the objection to the Applicants' use of the trademark Pringles®.

**State of the Claims**

Claims 1 and 3-20 are pending. Claim 2 has been canceled without prejudice. Although responding to a Final Office Action, Applicants have amended several claims to place them in better condition for allowance or for appeal.<sup>1</sup> No new matter has been added, and all amendments to the claims are supported by the specification and/or the claims themselves.

**35 U.S.C. § 112 Rejection**

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<sup>1</sup> MPEP § 714.12: "Any amendment that will place the application either in condition for allowance or in better form for appeal may be entered."

Claims 5-9, 16 and 18 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention.

The Examiner states that Claim 5 is indefinite because it seems to contradict Claim 1.

Applicants have amended Claim 5 to more clearly state that it is the peripheral edge of the bottom snack piece that substantially rests upon the container bottom. Support for the amendment to Claim 5 can be found at page 5, lines 13-14. No new matter has been added.

In Claims 6, 8 and 18, the Examiner states that there is insufficient antecedent basis for several of the terms in the claims; e.g., "saddle height", "center height", and "center radius".

Applicants have amended Claims 1 and 11 to provide the proper antecedent basis for the use of the foregoing terms. Support for the amendments can be found in Claims 6, 8, 18 as well as throughout the specification. No new matter has been added.

Based upon the amendments to claims noted herein Applicants believe that their claims now overcome the Examiner's rejections for indefiniteness. Therefore, Applicants respectfully request reconsideration and allowance of Claims 5-9, 16 and 18 over the Examiner's 35 U.S.C. § 112, second paragraph, rejection.

#### 35 U.S.C. § 102(b) Rejection

Claims 1-20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Johnson (U.S. Patent No. 4,164,588).

Johnson '588 defines a package liner, not a package, that is shaped.

According to MPEP § 2131 a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. The elements must be arranged as required by the claim.

Applicants do not agree that Johnson '588 provides a proper anticipatory reference under 35 U.S.C. § 102(b). First, Johnson '588 teaches a mere "liner".<sup>2</sup> According to Johnson '588, the package liner is placed within a package, and is not itself the package.<sup>3</sup> Also, this liner is made from an elongated sheet of flexible packaging material.<sup>4</sup> The Examiner, in the above-noted

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<sup>2</sup> Johnson (U.S. Patent No. 4,164,588: col. 1, lines 1-2; Title: Package Liner and Fragile Snack Chip Combination).

<sup>3</sup> Id. at col. 4, lines 51-54.

<sup>4</sup> Id. at col. 1, lines 26-29.

office action, admits that Johnson provides only a package liner and not a shaped container bottom that is itself an integral part of the package.<sup>5</sup>

As noted in Claim 1 of Applicants' specification, Applicants provide a shaped container bottom. The container bottom is an integral part of the container and is not an insert therein. Also, the container bottom, as well as the rest of the container, are formed from a thermoplastic material.<sup>6</sup> Suitable thermoplastic materials include, but are not limited to, polyolefins, such as polyethylene (PE), polypropylene (PP), polystyrene, and the like.<sup>7</sup> Lastly, Applicants' Claim 1 specifically recites that the container bottom itself has a concave curvature about the bottom panel of the container.<sup>8</sup>

Applicants therefore respectfully assert that Johnson '588 fails to disclose Applicants' shaped container bottom wherein the container bottom is itself an integral part of the container. Furthermore, Johnson's '588 liner, since it is an insert and not itself part of the container, does not teach Applicants' container bottom having a concave-curvature.

Applicants therefore request reconsideration and allowance of Claims 1-20 over the Examiner's 35 U.S.C. § 102(b) rejection as applied to Johnson '588.

Claims 1-20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Baur, et al. (U.S. Patent No. 3,498,798).

Baur '798 does not teach or provide a shaped container bottom. The Examiner's contentions notwithstanding, Baur '798 neither teaches in their specification nor discloses in their figures a shaped container bottom like Applicants'. Net, this key element is completely missing from Baur '798.

What the Examiner seems to be referencing are the snack chips shown in Fig. 1 of Baur '798. However, the bottom snack piece is not shown to be resting on a shaped container bottom, nor does Baur '798, anywhere within its disclosure, teach or disclose that its container bottom is shaped. In fact, at column 3, lines 56-58, Baur '798 states the following: "Although only top member 13 is shown, the seal and method shown and described are also applicable to bottom member 12."

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<sup>5</sup> Examiner's Office Action dated April 18, 2003, page 4, line 2.

<sup>6</sup> Applicants' Specification at page 8, lines 12-14.

<sup>7</sup> Id. at page 8, lines 14-15.

<sup>8</sup> Id. at page 11, lines 3-4.

From this, several facts may be gleaned. First, the bottom member 12 (which the Examiner is referencing as being shaped) is not shown in any diagram of Baur '798 to be shaped or otherwise. Also, one of skill in the art would surmise that it is the intention of Baur '798 to have formed bottom member '798 similarly to top member 13 which is in fact flat and un-shaped; i.e., not shaped like Applicants' shaped container bottom.

Therefore, Applicants' respectfully contend that Baur '798 should be removed as an anticipatory reference against Applicants' claims and Claims 1-20 should be allowed over the Examiner's 35 U.S.C. § 102(b) rejection as applied to Baur '798.

Claims 1-20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Griffith (U.S. Patent No. 4,011,347).

Griffith '347 does not disclose Applicants' invention. In Claim 1, Applicants claim a shaped container bottom having a concave curvature to the container bottom.<sup>9</sup> This concave curvature is definitively shown in Applicants' Figure 9 in which the container bottom curves upwardly into the container. In stark contrast to Applicants' invention, Griffith '347 provides a container bottom that curves downwardly away from the container thereby forming a convex curvature in their container bottom. This convex curvature of Griffith's is readily seen in Figures 1, 2, 3, and 3A of Griffith '347. Apparently, Griffith '347 is missing the element of Applicants' shaped container bottom having a concave curvature.

Since this key element is missing in Griffith '347, Applicants respectfully request reconsideration and allowance of Claims 1-20 over the Examiner's 35 U.S.C. § 102(b) rejection as applied to Griffith '347.

Claims 1-7 and 10-20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Sagan (U.S. Patent No. 6,042,856).

Sagan provides a tray that provides for the presentation of shrimp in a circular array.

Sagan's container is missing several elements of Applicants' shaped container bottom. First, Sagan '865 does not provide a container whose concave-curvature bottom panel substantially conforms to the curvature of a snack piece. Also, Sagan '865 presents shrimp, not snack chips. Further, Sagan '865 does not stack their shrimp like Applicants' snack chips.

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<sup>9</sup> Id. at page 11, lines 1-6.

Rather, Sagan '865 presents shrimp in a circular array.<sup>10</sup> Applicants therefore respectfully disagree with the Examiner's contentions that Sagan '865 discloses Applicants' invention.

Without these elements and others, Sagan '856 cannot be properly said to provide a basis for a 35 U.S.C. § 102(b) rejection. Applicants therefore respectfully request reconsideration and allowance of Claims 1-7 and 10-20 over the Examiner's 35 U.S.C. § 102(e) rejection.

Claims 1-4 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Ruiz (U.S. Patent No. 4,873,099).

With regard to Ruiz '099, Applicants' invention comprises a shaped container bottom formed thusly to receive a plurality of curved snack pieces. The bottom panel of the container has a concave-curvature that substantially conforms to the curvature of the snack pieces. Furthermore, at least a portion of the peripheral edge of the lowest snack piece rests upon Applicants' bottom panel.

Ruiz '099 does not provide a curved container bottom. Ruiz's container bottom is completely planar (i.e., flat) and non-curved in any respect which is evident in his Figs. 5 and 6. Also, no part of the peripheral edge of the lowest edible product in Ruiz '099 touches or makes contact with the bottom panel of Ruiz's container.

Since at least one element is missing to properly establish a rejection under 35 U.S.C. § 102(b) based upon Ruiz '099, Applicants respectfully request reconsideration and allowance of Claims 1-4 over Ruiz '099.

Claims 1-4, 6-10 and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by a stack of three or more PRINGLES potato crisps as disclosed by Applicants' specification.

A stack of Pringles® potato crisps, in and of themselves, do not provide a curved, concave container bottom for stacking said crisps. Without the curved container bottom to stack the crisps, which Applicants claim and show, a key element to establishing a proper rejection under 35 U.S.C. § 102(b) is missing. Applicants respectfully assert that the Examiner has not made a proper rejection based on anticipation and therefore request reconsideration and allowance of Claims 1-4, 6-10 and 19 over the Examiner's 35 U.S.C. § 102(b) rejection.

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<sup>10</sup> Sagan (U.S. Patent No. 6,042,856): Fig. 1.

35 U.S.C. § 103 Rejection

Claims 6-9 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnson '588, Griffith '347 and Baur '798. The Examiner states that each reference discloses the invention individually except for the dimensions recited.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all of the claim limitations. (MPEP § 2142).

Applicants respectfully disagree with the Examiner's contentions. First, Johnson '588 fails to teach or disclose a concave curved, shaped container bottom wherein the shaped container bottom is integrally affixed to the container itself. Rather, Johnson '588 merely provides an insert that is placed within a container. In addition, Applicants assert that Johnson '588 teaches away from Applicants' invention. In his disclosure Johnson 1) teaches that his insert should be flexible for bending of the insert material and 2) that the liner is a sheet of single faced corrugated paper.<sup>11</sup>

Nothing in Johnson '588 teaches or suggests transforming his insert into a container. Rather, the fact that his insert must be "flexible for bending" directly teaches away from the insert's ability to act as a separate package. Johnson '588 does not teach or suggest Applicants' "thermoplastic material" for use in his insert.<sup>12</sup> Applicants assert that the choice of use of Johnson's paper versus Applicants' thermoplastic material is not a matter of design choice because Johnson's liner requires a flexibility for folding that Applicants' thermoplastic material does not provide; namely, the flexibility of paper. Given these omissions by Johnson '588, Applicants respectfully assert that the Examiner's rejection based on obviousness has not been met. Therefore, Applicants respectfully request reconsideration and allowance of Claims 6-9 and 18 over 35 U.S.C. § 103(a) in view of Johnson '588.

As noted above, Baur '798 does not teach or disclose a shaped container bottom whose bottom panel has a concave curvature about an axis. Baur '798 merely provides a tubular package for storing snack pieces. Without some suggestion or teaching of Applicants' shaped container bottom, it is improper to apply Baur '798 against Applicants' invention in an

<sup>11</sup> Johnson '588: col. 2, lines 49-57; and col. 3, lines 13-15.

<sup>12</sup> Applicants' Specification at page 8, lines 12-14.

obviousness rejection. Therefore, Applicants respectfully request reconsideration and allowance of Claims 6-9 and 18 over the 35 U.S.C. § 103(a) rejection.

Claims 8 and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sagan '865. The Examiner states that Sagan '865 discloses the invention except for the center radius dimensions. The Examiner further states that it would have been obvious by design choice to reduce the scale (make invention smaller) in order to accommodate smaller shrimp and reduced amount of dipping sauce required for smaller shrimp so that the size [of] the center radius is less than 60 mm and between 15 to 35 mm.

Sagan '865 presents shrimp, not snack chips. Further, Sagan '865 does not stack their shrimp.. Rather, Sagan '865 presents shrimp in a circular array and not the stacked condition of Applicants' snack chips.<sup>13</sup> Applicants therefore respectfully disagree with the Examiner's contentions that Sagan '865 discloses Applicants' invention.

Sagan '865 neither teaches or discloses the elements of Applicants' invention and without such teaching or disclosure, the Examiner's obviousness rejection cannot properly stand. Therefore, Applicants respectfully request reconsideration and allowance of Claims 8 and 9 over 35 U.S.C. § 103 in view of Sagan '865.

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<sup>13</sup> Sagan (U.S. Patent No. 6,042,856): Fig. 1.

**SUMMARY**

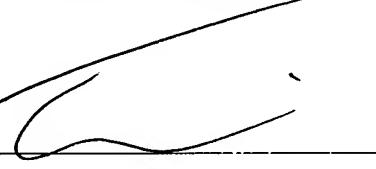
The rejection in the Office Action has been discussed and, Applicants believe, the proper amendments have been set forth to address the rejection.

In light of both the amendments and the discussions contained herein, Applicants respectfully request reconsideration of the rejection and its withdrawal.

Issuance of a Notice of Allowance at an early date is earnestly solicited.

Respectfully submitted,

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